

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 IO-14 ISO-00 L-03 FRB-01 OMB-01
ITC-01 SP-02 ICA-20 AGRE-00 AID-05 CIAE-00
COME-00 INR-10 LAB-04 NSAE-00 OIC-02 SIL-01
OPIC-06 STR-07 TRSE-00 CEA-01 SS-15 AF-10 ARA-14
EA-12 NEA-10 JUSE-00 FTC-01 /161 W
-----037944 241701Z /46

R 241557Z JUL 78

FM USMISSION GENEVA
TO SECSTATE WASHDC 2455
INFO AMEMBASSY PARIS
USMISSION USUN NEW YORK

UNCLAS SECTION 01 OF 02 GENEVA 11358

USOECD

E.O. 11652: N/A

TAGS: UNCTAD

SUBJECT: MEETING OF UNCTAD 3RD AD HOC GROUP OF EXPERTS ON
RESTRICTIVE BUSINESS PRACTICES, JULY 10-21, 1978

REF: GENEVA 11007

PASS JUSTICE FOR DAVIDOW AND FTC FOR FISCHBACH

1. SUBJECT MEETING WAS HELD AS SCHEDULED IN GENEVA. SEE
REFTEL FOR RESULTS THROUGH JULY 17.
2. FULLER PROGRESS WAS MADE ON AGREED TEXT OF PRINCIPLES
AND RULES DURING SECOND WEEK. NEW AGREED TEXT FOLLOWS:
BEGIN TEXT: (4.) ENTERPRISES, (SHOULD) (SHALL) REFRAIN
FROM THE FOLLOWING RESTRICTIVE BUSINESS PRACTICES (OR
OTHERS OF SIMILAR EFFECTS):
(I) PARTICIPATING IN OR OTHERWISE PURPOSELY STRENGTHENING
THE RESTRICTIVE EFFECTS OF CARTELS SUCH AS:...

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(5.) ENTERPRISES (SHOULD) (SHALL) REFRAIN FROM THE FOL-
LOWING ACTS OR BEHAVIOUR (OR OTHERS OF SIMILAR EFFECTS IN
A RELEVANT MARKET WHEN, THROUGH AN ABUSE
(BEGIN FOOTNOTE: WHETHER ACTS OR BEHAVIOUR ARE
ABUSIVE OR NOT SHOULD BE EXAMINED IN TERMS OF THEIR PURPOSE
AND EFFECT IN THE ACTUAL SITUATION, IN PARTICULAR WITH
REFERENCE TO (THE DEFINITION OF RESTRICTIVE BUSINESS

PRACTICES AND TO) (NOTE: GROUP D BRACKETS) WHETHER THEY ARE:

(A) APPROPRIATE IN LIGHT OF SPECIAL CONDITIONS OR ECONOMIC CIRCUMSTANCES IN THE RELEVANT MARKET;

(B) OF TYPES WHICH ARE USUALLY TREATED AS ACCEPTABLE UNDER PERTINENT NATIONAL OR REGIONAL LAWS AND REGULATIONS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES;

(C) CONSISTENT WITH THE PURPOSES AND OBJECTIVES OF THESE PRINCIPLES AND RULES. (END FOOTNOTE)

OR ACQUISITION AND ABUSE OF A DOMINANT POSITION OF MARKET POWER, THEY LIMIT ACCESS TO MARKETS OR OTHERWISE UNDULY RESTRAIN COMPETITION, HAVING OR BEING LIKELY TO HAVE ADVERSE EFFECTS ON INTERNATIONAL TRADE, PARTICULARLY THAT OF DEVELOPING COUNTRIES, AND ON THE ECONOMIC DEVELOPMENT OF THESE COUNTRIES:

- (I) PREDATORY BEHAVIOUR TOWARDS COMPETITORS, SUCH AS
- USING BELOW COST PRICING TO ELIMINATE COMPETITORS;
- (II) DISCRIMINATORY (I.E. UNJUSTIFIABLY DIFFERENT-
- IATED) PRICING OR TERMS OR CONDITIONS IN THE SUPPLY OR
- PURCHASE OF PRODUCTS OR SERVICES; (OR EXCESSIVE
- PRICING OF PRODUCTS AND SERVICES;)
- (III) MERGERS, TAKEOVERS, JOINT VENTURES OR OTHER
- ACQUISITIONS OF CONTROL, WHETHER OF A HORIZONTAL,
- VERTICAL OR A CONGLOMERATE NATURE;
- (IV) WHEN NOT FOR ENSURING THE ACHIEVEMENT OF LEGITI-
- MATE BUSINESS PURPOSES, SUCH AS QUALITY, SAFETY,
- ADEQUATE DISTRIBUTION OR SERVICE:

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(BEGIN FOOTNOTE: EXPERTS FROM GROUP D WOULD HAVE WANTED WORDS "ADEQUATE DISTRIBUTION OR SERVICE" DELETED OR REPLACED BY CLEARER TERMS. END FOOTNOTE)

- (A) PARTIAL OR COMPLETE REFUSALS TO DEAL ON THE
- ENTERPRISE'S CUSTOMARY COMMERCIAL TERMS;
- (B) MAKING THE SUPPLY OF PARTICULAR PRODUCTS OR
- SERVICES DEPENDENT UPON THE ACCEPTANCE OF RESTRICT-
- IONS ON THE DISTRIBUTION OR MANUFACTURE OF COMPETING
- OR OTHER PRODUCTS, OR IMPOSING RESTRICTIONS CON-
- CERNING WHERE, OR TO WHOM, OR IN WHAT FORM OR
- QUANTITIES THE SUPPLIED PRODUCTS MAY BE RE-SOLD
- OR EXPORTED;
- (C) MAKING THE SUPPLY OF PARTICULAR PRODUCTS OR
- SERVICES DEPENDENT UPON THE PURCHASE OF OTHER
- PRODUCTS OR SERVICES FROM THE SUPPLIER OR HIS
- DESIGNEE. END TEXT.

3. GROUP B OFFICIALS INSERTED NEW PROPOSAL FOR PERIODIC MEETINGS OF GOVERNMENT OFFICIALS WHOSE RESPONSIBILITIES INCLUDE CONTROL OF RBP'S, ALONG THE LINES OF OECD COMMITTEE OF EXPERTS ON RBP'S, AND FOR A CONSULTATION PROCEDURE. OTHER GROUPS DID NOT RESPOND TO THESE PROPOSALS.

NEW GROUP B TEXT FOLLOWS:

(IV) CONSULTATIONS

- (A) WHERE A STATE, PARTICULARLY OF A DEVELOPING
- COUNTRY, BELIEVES THAT CONSULTATION WITH ANOTHER
- STATE OR STATES IS APPROPRIATE IN REGARD TO AN
- ISSUE CONCERNING THE CONTROL OF RESTRICTIVE BUSINESS
- PRACTICES, IT MAY REQUEST A CONSULTATION WITH THOSE
- STATES WITH A VIEW TO FINDING A MUTUALLY ACCEPTABLE
- SOLUTION;
- (B) STATES SHOULD ACCORD FULL CONSIDERATION TO RE-
- QUESTS FOR CONSULTATIONS AND UPON AGREEMENT AS TO
- THE SUBJECT OF AND THE PROCEDURES FOR SUCH A CON-

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- SULTATION, INCLUDING POSSIBLE TECHNICAL ASSIST-
- ANCE FROM INTERNATIONAL ORGANIZATIONS, THE CON-
- SULTATION SHOULD TAKE PLACE AT AN APPROPRIATE TIME
- AND LOCATION;
- (C) WHERE A SATISFACTORY CONCLUSION IS REACHED AS A
- RESULT OF THE CONSULTATIONS, AND IF THE STATES IN-
- VOLVED SO AGREE, A REPORT ON THE MATTER SHOULD BE
- MADE AVAILABLE, AS APPROPRIATE, TO INTERESTED STATES
- AND INTERNATIONAL ORGANIZATIONS.

(V) PERIODIC MEETINGS SHOULD BE ORGANIZED AMONG OFFICIALS
HAVING RESPONSIBILITIES RELATED TO THE CONTROL OF RE-
STRICTIVE BUSINESS PRACTICES IN STATES AND REGIONAL

GROUPINGS IN ORDER TO CONFER ON MATTERS OF POLICY,
SHARE CURRENT EXPERIENCE, AND OTHERWISE FACILITATE
EFFORTS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES.
STATES AND REGIONAL GROUPS WHICH DO NOT HAVE SYSTEMS
FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES SHOULD
BE ENCOURAGED TO SEND REPRESENTATIVES TO SUCH MEETINGS.
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END TEXT.

4. GROUP B CHANGED THE EXEMPTION CLAUSE CONCERNING INTRA-
ENTERPRISE PRACTICES TO ELIMINATE LANGUAGE CONCERNING
RATIONALIZATION AND ALLOCATION OF FUNCTIONS. G-77 IN-
DICATED THAT IT COULD NOT MAKE ANY MOVEMENT ON THIS
POINT PRIOR TO A NEGOTIATING CONFERENCE ON THE PRINCIPLES
AND RULES. NEW GROUP B EXT FOLLOWS:
(V) THE PRINCIPLES AND RULES FOR ENTERPRISES SHALL NOT
APPLY TO AGREEMENTS, ARRANGEMENTS OR RESTRICTIONS BETWEEN
PARENT AND SUBSIDIARY OR AMONG ENTERPRISES BELONGING TO
THE SAME CONCERN, UNLESS AMOUNTING TO AN ABUSE OF A
DOMINANT POSITION OF MARKET POWER WITHIN THE RELEVANT
MARKET, FOR EXAMPLE, ADVERSELY AFFECTING COMPETITION OUT-
SIDE THESE ENTERPRISES. END TEXT.

5. REGARDING FUTURE WORK, UNCTAD SECRETARIAT AND G-77
ASKED FOR RECOMMENDATION THAT NEGOTIATING SESSION TO
ADOPT THE PRINCIPLES AND RULES BE HELD. GROUP B REFUSED
TO GIVE SUCH A RECOMMENDATION, SUGGESTING THAT A FURTHER
MEETING OF THE EXPERT GROUP WAS DESIRABLE. THE REPORT OF
THIS MEETING WILL GO TO THE TRADE AND DEVELOPMENT BOARD
AT ITS NEXT SESSION (AUGUST-SEPTEMBER) WITHOUT A SUG-
GESTION FOR A FURTHER MEETING OF THE EXPERT GROUP. G-77
INDICATED THAT ITS FLEXIBILITY ON REMAINING DISAGREED
POINTS PROBABLY WOULD BE SMALL IN FURTHER MEETINGS AT
EXPERT LEVEL.

6. AT THE FINAL PLENARY SESSION, A NUMBER OF STATEMENTS
OF INTEREST WERE MADE. GROUP B POINTED OUT FOR THE
RECORD ITS CONCERN THAT THE AGREED DEFINITION OF ENTER-
PRISES WAS BEING MISINTERPRETED BY UNCTAD SECRETARIAT AND
G-77 TO THE EFFECT THAT BRANCHES WERE SEPARATE ENTER-
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PRISES AND THAT SUBSIDIARIES AND PARENTS ALWAYS CON-
STITUTED SEPARATE ENTERPRISES FOR RBP PURPOSES. GROUP B
STATED THAT ITS INTERPRETATION OF THE TEXT WAS BASED UPON

ITS UNDERSTANDING OF THE DEFINITIONS. G-77 STATED ITS VIEW THAT THE DEFINITION SPOKE FOR ITSELF.

7. GROUP D (USSR) MADE ITS ROUTINE PROTEST OVER THE INCLUSION IN FRG DELEGATION OF AN OFFICIAL OF THE FEDERAL CARTEL OFFICE, LOCATED IN WEST BERLIN. THE CUSTOMARY ANSWER WAS DELIVERED BY THE FRENCH DELEGATE ON BEHALF OF THREE WESTERN OCCUPYING POWERS. GROUP D ALSO NOTED ITS VIEW THAT THE PRINCIPLES AND RULES SHOULD APPLY ONLY TO PRIVATE ENTERPRISES, AS OPPOSED TO STATE ENTERPRISES, CITED ITS PROPOSALS FOR A FOOTNOTE TO THIS EFFECT AND A DEFINITION OF CARTELS WHICH WERE NOT ACCEPTED BY EITHER GROUP B OR G-77, AND URGED DELETION OF "ECONOMIC" FROM THE PHRASE "TRADE AND ECONOMIC DEVELOPMENT" SO THAT SOCIAL DEVELOPMENT COULD ALSO BE CONSIDERED.

8. REGARDING THE DRAFT MODEL LAW, THERE WAS NO DISCUSSION BUT GROUP B QUESTIONED WHETHER CONSUMER PROTECTION WAS AN APPROPRIATE SUBJECT TO BE CONSIDERED IN THE CONTEXT OF RBP'S GENERALLY, PARTICULARLY IN VIEW OF PROPOSALS FOR WORK ON THIS SUBJECT IN ECOSOC.

9. G-77 STATED THAT THE PRINCIPAL ISSUES REMAINING TO BE NEGOTIATED IN A CONFERENCE AT POLITICAL LEVEL WERE:
(I) EXCEPTIONS TO THE PRINCIPLES AND RULES;
(II) PREFERENTIAL TREATMENT FOR ENTERPRISES OF DEVELOPING - COUNTRIES;
(III) INTRA-ENTERPRISE PRACTICES;
(IV) THE ROLE TO BE PLAYED BY UNCTAD IN THE IMPLEMENTATION - AND MONITORING OF THE PRINCIPLES AND RULES; AND
(V) THE LEGALLY BINDING NATURE OF THE PRINCIPLES AND RULES.
VANDEN HEUVEL

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Message Attributes

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